



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

**1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733**

December 21, 2011

U.S. Army Corps of Engineers
Tulsa District
Planning and Environment Division
Stephen L. Nolen
1645 S. 101st East Avenue
Tulsa, OK 74128-4629

Mr. Nolen,

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) prepared by the U.S. Army Corps of Engineers (USACE). In accordance with section 3182 (j) and (k) of the Water Resources Development Act (WRDA) of 2007, the USACE proposes to convey approximately 635 acres of Federal land at Lake Texoma to the City of Denison, Texas. Upon receipt of title to these lands, the city will retain portions for public facilities and transfer the remaining land to Schuler Development.

EPA rates the DEIS as "EC-2" i.e., EPA has "Environmental Concerns and Requests Additional Information in the Final EIS (FEIS)". The EPA's Rating System Criteria can be found here: <http://www.epa.gov/oecaerth/nepa/comments/ratings.html>. Detailed comments are enclosed with this letter which more clearly identifies our concerns and the informational needs requested for incorporation into the FEIS. Responses to comments should be placed in a dedicated section of the FEIS, or its appendices, and should include the specific location where the revision, if any, was made. If no revision was made, a clear explanation should be included.

EPA appreciates the opportunity to review the DEIS. Please send our office two copies of the FEIS, and an internet link, when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action.

If you have any questions or concerns, please contact Keith Hayden of my staff at hayden.keith@epa.gov or 214-665-2133 for assistance.

Sincerely,

A handwritten signature in cursive script, reading "Rhonda Smith", is written over a horizontal line.

Rhonda Smith
Chief, Office of Planning and Coordination

Enclosure

**DETAILED COMMENTS ON THE
U.S. ARMY CORPS OF ENGINEERS'
DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
CITY OF DENISON LAND CONVEYANCE AT LAKE TEXOMA
GRAYSON COUNTY, TEXAS**

BACKGROUND: Section 3182 of the WRDA of 2007 directs the Secretary of the Army to convey, at fair market value, approximately 635 acres of Federal land at Lake Texoma to the City of Denison, Texas. Upon receipt of title to these lands, the city proposes to retain portions for public facilities and transfer the remaining land to a private company for development. Federal activities pertaining to this action include the potential conveyance of land, and possible alteration of the Lake Texoma Shoreline Management Plan (SMP). In addition to a no action alternative, three alternatives involving land conveyance and varying degrees of shoreline development are assessed.

The following comments are offered for your agency's consideration in completing the FEIS:

DETAILED COMMENTS

1.0 PURPOSE AND NEED FOR THE PROPOSED ACTION

1.5 Statement of purpose and need

The stated purpose of the action is to meet the requirements of, and intent behind, conveyance of federally owned land as directed by Section 3182(j) of the WRDA of 2007. Impacts to the human and natural environment may preclude even a legislatively mandated project from being constructed if a national environmental standard is violated or significant environmental degradation occurs.

3.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT

3.4.6 Prime and unique farmlands

USACE determined that prime and unique farmlands do not exist in the proposed conveyance area or the Preston Harbor Development. According to the Natural Resource Conservation Service (NRCS) Web Soil Survey, prime and unique farmlands exist within portions of the proposed conveyance area and Development. In order to comply with the Farmland Protection Policy Act (FPPA), consultation with the State of Texas soil conservationist is required to determine mitigation measures or potential project modifications. In the FEIS, please include documentation of consultation with the Texas soil conservationist and resulting mitigation measures to be taken.

4.0 ENVIRONMENTAL CONSEQUENCES

4.3.1 Lake Texoma Shoreline Management Plan (SMP)

EPA concurs with prior comments submitted by United States Fish and Wildlife Service (USFWS), Oklahoma Department of Wildlife Conservation (ODWC), and Texas Parks and Wildlife Department (TPWD) regarding the purpose and intent of the SMP. Environmental protection of resources and restoration of the shoreline due to degradation from private use were the drivers of the 1996 SMP and the moratorium on future development. Please explain in the final EIS how revising the SMP to accommodate the preferred alternative reflects the purpose and goals of the SMP.

4.4.2 Soils - compaction and erosion

This section discusses best management practices (BMP's) for reducing the effects of erosion through the use of silt fencing and erosion blankets. These BMP's are usually offered as standard operating procedures (SOP's) for complying with Texas Pollutant Discharge Elimination System (TPDES) general permits for construction; and therefore cannot be considered mitigation for the proposed project impacts.

4.6.2 Erosion, turbidity, and sedimentation

This section discusses BMP's for reducing the effects of erosion, turbidity, and sedimentation through the use of silt fencing, erosion blankets, and hay bales. These BMP's are usually offered as SOP's for complying with TPDES general permits for construction; and therefore cannot be considered mitigation for the proposed project impacts.

4.6.3 Nutrients and Biological Oxygen Demand (BOD)

Table 4.6.2 indicates the preferred alternative would increase nitrogen, phosphorus, and BOD by 12.4%, 11.4%, and 19.9%, respectively, over existing levels. Sections 3.6.7 - 3.6.9 indicates Lake Texoma experienced a fish kill in 2004 due to golden-algae blooms. In 2011, the lake was closed for recreation due to blue-green algae blooms. According to literature cited in the DEIS, nitrogen and phosphorus loading are the leading cause of chemical algal growth. This section should analyze how the increased levels of nutrients and BOD will affect future recreation and fish survival. BMP's associated with golf course management in this section are considered SOP's, and therefore, cannot be claimed as mitigation for the proposed alternative's impacts.

4.6.5 Other water quality pollutants

Compliance with existing state regulations cannot be considered mitigation for water quality pollutants associated with the proposed alternative.

4.7.1 Vegetation

Impacts to mixed upland forests and grasslands are considered significant according to Table 4.7.3; which would be reduced by 56% and 60%, respectively. This section of the DEIS states “The land conveyance is a Congressionally-mandated action without specific language or direction regarding required replacement of lost habitat or resources. Accordingly, while some avoidance and minimization measures are possible, a requirement for mitigation in the form of replacement of lost land resources and habitat is not included as part of the proposed plan.” While not offering specifics, Section 3182(k)(3) of the WRDA of 2007 states “The Secretary may require that any conveyance under this section be subject to such additional terms and conditions as the Secretary considers appropriate and necessary to protect the interests of the United States.” EPA recommends USACE follow Section 906(d) of the WRDA of 1986, as amended by Section 2036(a) of the WRDA of 2007, pertaining to fish and wildlife mitigation. This would mitigate forest and grassland losses to not less than in-kind conditions. It is recommended that applicable federal and state agencies tasked with stewardship of natural resources be consulted concerning mitigation options.

4.7.2 Wildlife

Impacts to wildlife as a result of the proposed alternative are largely a result of impacts to their habitat. EPA recommends USACE follow Section 906(d) of the WRDA of 1986, as amended by Section 2036(a) of the WRDA of 2007, pertaining to fish and wildlife mitigation. This would mitigate habitat losses to not less than in-kind conditions. It is recommended that applicable federal and state agencies tasked with stewardship of natural resources be consulted concerning mitigation options.

4.7.4 Lake Texoma fisheries and aquatic resources

EPA recommends USACE ensure compliance with the Fish and Wildlife Coordination Act (FWCA) by consulting with the TPWD, USFWS, and the ODWC in developing appropriate mitigation strategies for impacts to fisheries and aquatic resources.

4.7.7 Migratory birds

A total of 83 migratory species can be found in Lake Texoma during the spring and fall migration period. These species include the least tern (*Sterna antillarum*) and piping plover (*Charadrius melodus*); which are threatened and endangered species according to USFWS. EPA recommends USACE consult with the Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and the Oklahoma Department of Wildlife Conservation in developing appropriate mitigation strategies for the impacts to migratory bird habitat.

4.10 Public lands

The DEIS correctly identifies the expansion of recreation opportunities available to the public as a result of the proposed alternative, but there needs to be a clearer distinction between public lands as it is currently defined and how public lands are defined in the proposed

conveyance area. Current access to the proposed conveyance land is free and open to the general public. After the proposed conveyance, all lands will be privately owned except for the public park identified in the preferred alternative. Access to other areas of the conveyed land will be contingent on staying at the proposed hotel, living within the development, or paying to use the golf or other facilities proposed to be located within the conveyance area.

4.15 Air quality

EPA encourages the use of clean, lower-emissions equipment and technologies to reduce pollution. EPA's final Highway Diesel and Non-road Diesel Rules mandate the use of lower-sulfur fuels in non-road and marine diesel engines beginning in 2007.

4.15.1 Greenhouse gases

By statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, and eliminating or reducing greenhouse gas (GHG) emissions. By removing up to approximately 340 acres of upland hardwood forests and other vegetation, a natural carbon sink is also being removed. Due to the proposed project's long-term utility, EPA recommends the FEIS include a more detailed discussion of GHG emissions and climate change. The FEIS should include an analysis of the natural carbon removal process that would be lost if the proposed project is constructed and how that would contribute to the overall greenhouse gas emissions for the life of the project. For guidance, please see CEQ's "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" dated February 18, 2010.